NO. 13-20-00125-CV
(CONSOLIDATED WITH: NO. 13-20-00126-CV; NO. 13-20-00127-CV)

IN THE COURT OF APPEALS
FOR THE THIRTEENTH JUDICIAL DISTRICT OF TEXAS
AT CORPUS CHRISTI

Dr. Lalitha Madhav Janaki

Appellant

v.

C.H. Wilkinson Physician Network d/b/a Christus Physician Group, Christus Spohn Hospital – Corpus Christi and Christus Spohn Hospital Corpus Christi – Shoreline, and Christus Spohn Cancer Center – Calallen and Christus Spohn Cancer Center – Shoreline

Appellees

Appeal from the 319th Judicial District Court
Of Nueces County, Texas
Cause No. 2017-DCV-4930-G

Appellant's Second Amended Reply Brief

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STATEMENT REGARDING ORAL ARGUMENT

Appellant Dr. Lalitha Madhav Janaki believes oral argument will be helpful to resolve the issues on appeal.

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INTRODUCTION

Appellant Dr. Janaki raised genuine issues of material fact in the trial court as to whether the Appellees/Healthcare Defendants constituted a single employer liable to Dr. Janaki for her retaliatory termination. The trial court nonetheless granted summary judgment in each Appellee's favor despite the summary judgment evidence that showed the Hospital directed her termination, CR.116. Dr. Janaki also presented evidence showing how integrated and co-dependent each healthcare entity to each other for the successful operation of implementing cancer treatments to patients. CR.113-134. Appellees argue that this evidence is conclusory and should be inadmissible even though the trial court did not grant their motion to strike Dr. Janaki's evidence.

Appellant's fervently argue that the single integrated enterprise theory cannot be applied, simply because it has never been applied to Section 161.134 before. Appellees urge this court to affirm because they believe, by not doing so would demand a "an unprecedented expansion" of the scope of 161.134. Appellees.Br.8.

Dr. Janaki is only asking this Court to review the record *de novo* and find that there were genuine issues of material fact presented to the trial court making summary judgment in the Healthcare Defendants' favor inappropriate.

ARGUMENT

I.

The trial court erred when it granted C.H. Wilkinson Physician Network d/b/a Christus Physician Group's "CPG" motion for summary judgment because a genuine issue of fact exists as to whether all Healthcare Defendants are a single employer.

Appellees argue that they conclusively negated at least one essential element of Dr. Janaki's Section 161.134 claim. The only element the Healthcare Defendants addressed in its summary judgment motion was that Dr. Janaki was not an employee of an entity covered by the statute. Specifically, that CPG is not a hospital, mental health facility, or treatment facility and thus not an employer liable for Dr. Janaki's retaliatory discharge.

Section 161.134 of the Texas Health and Safety Code prohibits retaliation against employees of hospitals, mental-health facilities, and treatment facilities who report "a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule adopted by

the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse." Tex. Health & Safety Code Ann. § 161.134.

The elements of a cause of action under section 161.134 are (1) an employee of a hospital, mental-health facility, or treatment facility, (2) reported a violation of law, (3) to a supervisor, administrator, state regulatory agency, or a law enforcement agency, (4) in good faith, and (5) as a result, the employee was suspended, terminated, disciplined, or otherwise discriminated against. *See Barron v. Cook Children's Health Care Sys.,* 218 S.W.3d 806, 810 (Tex.App.-Fort Worth 2007, no pet.); *see also Word v. Wilson N. Jones Reg'l Health Sys.,* 2007 WL 2421500 *9 (Tex.App.—Dallas Aug. 28, 2007, no pet.) (mem.op.). Appellees did not address the other elements of Dr. Janaki's retaliation claim in their motions and thus this appeal only addresses the employer-employee relationship issue. CR.34.

However, CPG's argument that it is not an entity covered under the statute is without merit. Dr. Janaki's evidence showed that while CPG was the entity which held Dr. Janaki's employment contract, the Hospitals and the Cancer Centers acted as her employer as well. The

Hospitals and Cancer Centers determined which physicians they wanted to be employed in their facilities, directing CPG on who to hire and who to fire as seen in the post-termination letter submitted as evidence to the trial court. CR.116. Dr. Janaki was dependent on the Hospitals and Cancer Centers to grant her privileges at those facilities so she could perform her medical practice and receive a paycheck from CPG. RR3. 11. For the purpose of Section 161.134, although Dr. Janaki's employment contract was with CPG, she was also an employee of the Hospitals and Cancer Centers, making her claim against the collective entities appropriate under Section 161.134.

Specifically, Dr. Janaki's post-termination letter, showed that "the hospital informed CPG that it no longer wanted Dr. Janaki to provide services under the CPG contract." CR.116. Since the Hospital defendant directed CPG to terminate Dr. Janaki's contract with CPG, the letter created a material issue of fact that the Healthcare Defendants acted as a single employer making them all liable to Dr. Janaki under Section 161.134.

Dr. Janaki does not dispute that CPG was her employer in that it held her employment contract. Dr. Janaki also does not dispute that

CPG, as a physician's network is not defined as a "hospital," "mental health facility," or "treatment facility" as defined under Section 161.134. What Dr. Janaki does dispute, is the other Healthcare Defendants are not also her employer. The trial court failed to apply the Fifth Circuit's four-part test to determine whether the hospital defendants and the cancer center defendants along with CPG are a single employer, making CPG just as liable for Dr. Janaki's retaliatory termination under Section 161.134.

II.

The trial court similarly erred in granting the Hospital Defendants' and the Cancer Center Defendants' Motions for Summary Judgment Because Dr. Janaki presented evidence that created a genuine issue of fact that they were Dr. Janaki's employer.

The Hospital Defendants assert that the trial court did not err in granting summary judgment for the other Healthcare Defendants because Dr. Janaki is not an employee of the Hospitals nor the Cancer Centers. Appellees also argue that Dr. Janaki's own Petition negates any claim that she was an employee of the Hospital Defendants or Cancer Center Defendants. As previously briefed and discussed above, this argument fails in light of the evidence Dr. Janaki presented to the trial court showing that the Hospitals determine which physicians they want

to work in their facilities including directing the firing of their employees such as Dr. Janaki. CR.116. Additionally, Dr. Janaki in her sworn affidavit based on her personal knowledge described in detail the interrelated operations of each Healthcare Defendant. CR.133-134.

III.

The Fifth Circuit's four-part test to determine whether separate entities are a single employer apply to this case.

Section 161.134 seeks to protect health care whistleblowers. While the Hospital Defendants argue that the single integrated enterprise theory would be a wild expansion of the its purpose, Dr. Janaki argues that the application would simply allow a physician to hold the entities that direct her employment and act as employers accountable for their wrongful actions. Appellees ultimately rest their argument on lack precedent, arguing that a plain read of the statute does not allow for applying the single integrated enterprise theory. Just because the single integrated enterprise theory has not been applied to the operative statute, does not mean that it is wrong to do so. Application would be consistent with the remedial nature of the statute.

Dr. Janaki again asks this Court to look toward analogous federal anti-discrimination and retaliation laws in addition to Texas case precedent to interpret Texas discrimination laws like the Texas Commission of Human Rights Act ("TCHRA"). *Prairie View A&M University v. Chata*, 381 S.W.3d 500 (Tex. 2012). Courts do so because the Texas statutes were enacted to address the specific evil of discrimination and retaliation in the workplace. *Id.* Appellees argue that Section 161.134 is devoid of any reference to Title VII or other federal anti-discrimination law, and Appellant does not dispute that. The comparison merely shows how Texas Courts have interpreted Texas discrimination laws like TCHRA (and in this case arguably Section 161.134) when case precedent does not exist. Courts looks to federal guidance.

The purpose of Section 161.134 is to prevent discrimination and retaliation against an employee for reporting a violation of law. The Fifth Circuit's four-part test that has emerged keeps in line with the statute's purpose because it allows for superficially distinct entities to be exposed to liability upon a finding that they represent a

single, integrated enterprise: "a single employer" – which applies here. *Trevino v. Celanese Corp.*, 701 F.2d 397, 403–04 (5th Cir. 1983).

The term "employer" as used in Title VII of the Civil Rights Act was meant to be liberally construed. *Id.* The Fifth Circuit recognized that numerous courts have drawn upon theories and rules developed in the related area of labor relations in determining when separate business entities are sufficiently interrelated for an employee whose Title VII rights have been violated to file a charge against both entities. *Id.*

Appellees assert that the cases Dr. Janaki cite are immaterial to the Court's inquiry. Specifically, that because *Johnson v. El Paso Pathology Group, P.A.*, involved a Title VII claim and not a state law claim that it is uninstructive. Appellant disagrees. The facts of the *Johnson* case were illustrative of how Courts have applied the single integrated enterprise theory to a hospital system and a pathology group, holding that the entities were a single employer under the *Trevino* factors. Dr. Janaki uses the *Johnson* case to illustrate that a court has applied the single integrated enterprise theory to a similar set of facts.

Although in *Johnson* the inquiry involved a pathology group that supplied pathologists to the hospital system, the analysis is still

applicable here to a physician's group that supplied Dr. Janaki to the hospital. The analysis is not immaterial; it is instructive. The *Johnson* Court also noted that the plaintiff could not seek work from other hospital systems to earn a living because like the hospital system in that case, other hospitals dealt exclusively with their own groups of pathologists. *Id.* at 861. There is nothing that prevents this Court from applying the same analysis here.

Appellees also take issue with another case Appellant cites, *Williams v. MMO Behavioral Health Systems, LLC*, where a behavioral health system and hospital were sued for alleged discriminatory employment practices under the Age Discrimination in Employment Act "ADEA." 2018 WL5886523*1 (E.D. La Nov. 9, 2018). Appellees describe the comparison as unremarkable because a federal court in a different state applied the factors to plaintiffs in an ADEA claim. Appellees miss the point; the *Williams* case was cited to show the applicability of the *Trevino* factors to another anti-discrimination law in the context of a hospital system. The case shows the applicability of the theory to another statute in its entirety where the terms "single integrated enterprise" fail to appear in the statutory language.

Lastly, Appellees clarify for the court that there is currently a split between Texas state courts that have applied the single integrated enterprise test and the hybrid economic/common law control test to determine the existence of an employment relationship in TCHRA claims. Appellees.Br.37. What Appellees have illustrated for this Court is that there are three distinct anti-discrimination statutes, two federal, Title VII, ADEA, and one state, TCHRA, with similar purposes to prevent discrimination in the employment context – and courts have applied the single integrated enterprise theory to each. None of these statutes use the term "single integrated enterprise" in them. Nonetheless the courts have applied the theory to hold separate entitles liable to prevent employers from skirting liability through a technicality. Appellees' statutory construction argument fails. Section 161.134 of the Texas Health and Safety Code has a similar purpose to prevent discrimination and retaliation, here against healthcare employees who report illegal activity. The applicability of the single integrated enterprise theory is in line with the statute's purpose.

While Appellees cite a recent case, *Hardy v. Oprex Surgery (Baytown) L.P.*, No. CV H-18-3869, 2020 WL 4756868, at *5 (S.D. Tex.

Aug. 14, 2020), for the proposition that the district court granted summary judgment disposing of the plaintiff's Section 161.134 claim because the wealth management company was not a hospital, mental health facility, or treatment facility, the court did not apply (nor did it reject) the single integrated enterprise theory to reach its conclusion but rather that the plaintiff failed to provide summary judgment evidence to raise a genuine issue of fact. *Id.* at *7. Here, Dr. Janaki has provided summary judgment evidence in the form of a post-termination letter and an affidavit describing the operations of the Healthcare Defendants.

IV.

Dr. Janaki's presented summary judgment evidence to create genuine issues of fact that the Healthcare Defendants were a single employer and the evidence's admissibility is not an issue on appeal.

The trial court did not rule on Appellees' motion to strike Dr. Janaki's summary judgment evidence. It is common knowledge that any objection not ruled on is presumed denied. In an abundance of caution, Appellant will address the arguments Appellees make below.

Appellees attempted to strike Dr. Janaki's summary judgment evidence in the Hospital Defendants' Replies to Dr. Janaki's Response to

their motions for summary judgment CR.136, CR.155, and CR.189, because Dr. Janaki's evidence without doubt raises a genuine issue of fact. Appellees' argument that the letter from CPG is hearsay is without merit; the letter is a statement by a party opponent, and is not hearsay. Tex. R. Evid. 801(d)(e)(2). Defendants' argument that the letter is irrelevant is also without merit, it goes to the heart of the fact issue of whether the hospital had joint control over Plaintiff as her employer. Defendants' argument that the letter is not properly authenticated is also without merit, Plaintiff in her affidavit identified the letter and testified that she received it from CPG. Tex. R. Evid. 901(b)(1). Appellees now argue that Dr. Janaki's affidavit is conclusory and therefore inadmissible. Appellant's affidavit is admissible because it was based on her personal knowledge. In sum, Appellant's summary judgment evidence created genuine issues of material fact precluding summary judgment in Healthcare Defendants' favor.

CONCLUSION

It is for these reasons that this Court should reverse and remand the trial court's decision to grant all three motions for summary judgment.

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I hereby certify that the foregoing Appellant's Brief is computer generated, has been prepared in conventional typeface no smaller than 14-point font for text and 12-point font for footnotes, contains 2274 words according to the word count function of the computer program used to prepare this Brief, excluding any parts exempted by Tex. R. App. P. 9.4(i)(1), and otherwise complies with Texas Rules of Appellate Procedure 9.4.

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